IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/10/2003

CORAM

THE HONOURABLE MR.JUSTICE P.D. DINAKARAN

W.P. No.19374 of 2003
and W.P.Nos. 19428 to 19430, 19440& 19441 of 2003
and
Connected W.P.M.P.s

P. Prabhakar Naidu ..Petitioner in
W.P.No.19374/03

P. Sankaraiah Naidu ..Petitioner in
W.P.No.19428/03

R. Ellamma ..Petitioner in
W.P.No.19429/03

V.C. Narahari ..Petitioner in
W.P.No.19430/03

P. Babu ..Petitioner in
W.P.No.19440/03

G. Ramachandra Naidu ..Petitioner in
W.P.No.19441/03

-Vs-

1. Tiruvalangadu Co-operative
Primary Agriculture and Rural
Development Bank Limited.,
No.D.r.L.(K) 6, rep. by its
Special Officer, Tiruvalangadu,
Tiruvallore District.

2. The Registrar of Co-operative
Societies, Tamilnadu Co-operative
Societies, Government of Tamilnadu
No.170, Periyar E.V.R. High Road,
Kilpauk, Chennai 600 010.

3. Government of Tamil Nadu,
rep. by its Secretary,
Ministry of Co-operation,
Fort St. George,

Chennai 600 009. ..Respondents in all
the writ petitions.

Prayer: Petitions under Article 226 of the Constitution of India praying for a Writ of Mandamus as stated therein.

For Petitioners :: Mr.N.V. Srinivasan

For Respondents :: Mr.M.Mahalingam,GA for R1
Mr.M.S.Palanisamy, AGP
for R-2 & R-3.

:O R D E R

Petitioners in these writ petitions are agriculturists. They availed agricultural loan from the first respondent Co-operative Bank. According to Mr.N.V. Srinivasan, learned counsel for the petitioners, out of the total loan amount availed by the petitioners namely, Rs.2,12,000/- Rs.2,12,000/-, Rs.2,12,000/- Rs.1,87,000/-, Rs.1,71,500/-& Rs.1,05,000/- respectively, the petitioners h ave paid so far Rs.1,56 ,000/-, Rs.2,76,880/-, Rs. 2,56,500/-, Rs.2,21,950/-, Rs.2,47,769/- & Rs.80,000/-respectively. However, the first respondent has demanded a sum of Rs.2,66,332/-, Rs.1,99,556/-, Rs. 4,02,850/-, Rs. 2,78,191/-, Rs. 70,600/- & Rs. 32,000/- from the respecti ve petitioners and also initiated recovery proceedings. Complaining that the first respondent is arbitrarily levying compound and penal interest on the amount due, placing reliance on the ratio laid down by the Apex Court in Central Bank of India V. Ravindra (AIR 2001 SC 3095), the petitioners seek a Writ of Mandamus declaring the action of the respondents in imposing penal interestand compounding of interest as illegal, null and void and to reconstruct the loan account by waiving compounding of interest and penal interest and to drop all further proceedings against the petitioners and direct the first respondent to comply with the directions issued by the RBI in agricultural loans and one time settlement of a Government of Tamil Nadu.

2. Mr.N.V. Srinivasan, learned counsel for the petitioners also contends that the petitioners having already paid 25% of the dues and therefore, they are not liable to pay penal interest as per G.O.D. No.1 21. It is also complained that the respondent Bank is levying penal interest on day-today basis.

3. Learned counsel for the respondents is not disputing the fact that the ratio laid down by the Honourable Supreme Court of India in Central Bank of India V.Ravindra (AIR 2001 SC 3095) is applicable to the facts of this case.

4. The Apex Court in Central Bank of India V. Ravindra (AIR 2001 SC 3095) held as follows:
"55. ....If the practice of charging interest on quarterly rests is upheld

and given a judicial recognition, unscrupulous banks may resort to charging interest even on monthly rests and capitalising the same. Statements of Accounts supplied by banks to borrowers many a times do not contain particulars or details of debit entries and when written in hand are worse than medical prescriptions putting to test the eyes and wits of the borrowers. Instances of unscrupulous, unfair and unhealthy dealings can be multiplied though they cannot be generalised. Suffice it to observe that such issues shall have to be left open to be adjudicated upon in appropriate cases as and when actually arising for decision and we cannot venture into laying down law on such issues as do not arise for determination before us. However, we propose to place on record a few incidental observations, without which, we feel, our answer will not be complete and that we do as under:

(1) Though interest can be capitalised on the analogy that the interest falling due on the accrued date and remaining unpaid, partakes the character of amount advanced on that date, yet penal interest, which is charged by way of penalty for non-payment, cannot be capitalised. Further interest, i.e. interest on interest, whether simple, compound or penal, cannot be claimed on the amount of penal interest. Penal interest cannot be capitalised. It will be opposed to public policy.

(2) Novation, that is, a debtor entering into a fresh agreement with creditor undertaking payment of previously borrowed principal amount coupled with interest by treating the sum total as principal, any contract express or implied and an express acknolwedgment of accounts are best evidence of capitalisation. Acquiescence in the method of accounting adopted by the creditor and brought to the knowledge of the debtor may also enable interest being converted into principal. A mere failure to protest is not acquiescence.

(3) The prevalence of banking practice legitimatises stipulations as to interest on periodical rests and their capitalisation being incorporated in contracts. Such stipulations incorporated in contracts voluntarily entered into and binding on the parties shall govern the substantive rights and obligations of the parties as to recovery and payment of interest.

(4) Capitalisation method is founded on the principle that the borrower failed to make payment though he could have made and thereby rendered himself a defaulter. To hold an amount debited to the account of the borrower capitalised it should appear that the borrower had an opportunity of making the payment on the date of entry or within a reasonable time or period of grace from the date of debit entry or the amount falling due and thereby avoiding capitalisation. Any debit entry in the account of the borrower and claimed to have been capitalised so as to form an amalgam of the principal sum may be excluded on being shown to the satisfaction of the Court that such debit entry was not brought to the notice of the borrower and/or he did not have the opportunity of making payment before capitalisation and thereby excluding its capitalisation.

(5) The power conferred by Sections 21 and 35-A of the Banking regulation Act, 1935 is coupled with duty to act. Reserve Bank of India is prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions, having statutory force, in the interest of public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any banking company generally. Reserve Bank of India is one of

the watchdogs of finance and economy of the nation. It is, and it ought to be, aware of all relevant factors, including credit conditions as prevailing, which would invite its policy decisions. RBI has been issuing directions/ circulars from time to time which, inter alia, deal with rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalised. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy.

(6) Agricultural borrowing are to be treated on a pedestal different from others. Charging and capitalisation of interest on agricultural loans cannot be permitted in India except on annual or six monthly rests depending on the rotation of crops in the area to which the agriculturist borrowers belong.

(7) Any interest charged and/or capitalised in violation of RBI directives, as to rate of interest, or as to periods at which rests can be arrived at, shall be disallowed and/or excluded from capital sum and treated only as interest and dealt with accordingly.

(8) Award of interest pendente lite and post-decree is discretionary with the Court as it is essentially governed by Section 34 of the CPC dehors the contract between the parties. In a given case, if the Court finds that in the principal sum adjudged on the date of the suit, the component of interest is disproportionate with the component of the principal sum actually advanced the Court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner.

56. In view of the law having been settled with this judgment, it is expected henceforth from the banks, bound by the directives of the Reserve Bank of India, to make an averment in the plaint that interest/compound interest has been charged at such rates, and capitalised at such periodical rests, as are permitted by, and do not run counter to, the directives of the Reserve Bank of India. A statement of account shall be filed in Court showing details and giving particulars of debit entries, and if debit entry relates to interest then setting out also the rate of, and the period for which, the interest has been charged. On the Court being prima facie satisfied, if a dispute is raised in that regard, of the permissibility of debits, the onus would be on the borrower to show why the amount of debit balance appearing at the foot of the account and claimed as principal sum cannot be so accepted and adjudged. This practice would n arrow down the scope of controversy in suits filed by banking institutions and enable an expeditious disposal of the suits, the issues wherein are by and large capable of being determined by documentary evidence. RBI directives have not only statutory flavor, any contravention thereof or any default in compliance therewith is punishable under sub-section (4) of Section 46 of Banking Regulation Act, 1949. The Court can act on assumption that transactions or dealings have taken place and accounts maintained by banks in conformity with RBI directives.

5. If that be so, suffice it to direct the 2nd respondent to appoint an auditor to look into the affairs of the first respondent Bank and

to find out as to whether the rate of interest demanded and collected is in compliance with the ratio laid down by the Apex Court in Central Bank of India V.Ravindra (referred supra). If the auditor finds that the rate of interest collected from the petitioners based on daily, monthly or quarterly rests, instead of half-yearly or annual rests, then the second respondent pass appropriate direction to set aside the penal interest collected from the petitioners and direct the first respondent to work out the actual arrears to be paid by the petitioners and inform the same to the petitioners within three months from the date of receipt of this order for settlement of the same and till then, the respondents shall not take any coercive steps against the petitioners towards the alleged dues from the petitioners. The writ petitions are ordered accordingly. No costs. Consequently, connected W.P.M.P.s are closed.

13.10.2003
nv
Index:Yes
Internet: Yes

To

1. The Registrar of Co-operative
Societies, Tamilnadu Co-operative
Societies, Government of Tamilnadu
No.170, Periyar E.V.R. High Road,
Kilpauk, Chennai 600 010.

2. Secretary,
Ministry of Co-operation,
Fort St. George,
Chennai 600 009.